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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL SAUFU MUI

Appeal 2008-4830
Application 10/737,029
Technology Center 2600

Decided: November 14, 2008

Before JAMESON LEE, RICHARD TORCZON and SALLY C. MEDLEY, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

DECISION ON APPEAL

A. Statement of the Case

ZiLOG, Inc. ("Zilog"), the real party in interest, seeks review under 35 U.S.C. § 134(a) of a Final Rejection of claims 1-10, 13-16 and 18-26. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part and enter a new ground of rejection.

Zilog's invention is related to a system and associated method that includes a key code generator that receives a keystroke from a remote

control device. The key code generator generates a key code and transmits the key code. Spec. 2-3, 6-8, 11-12.

Representative claim 1, reproduced from the Claim Appendix of the Appeal Brief, reads as follows:

> A method comprising:
> (a) receiving a keystroke indicator signal from a remote control device;
> (b) generating a key code within a key code generator device;
> (c) modulating said key code onto a carrier signal, thereby generating a key code signal; and
> (d) transmitting said key code signal from said key code generator device.

The Examiner relies on the following prior art in rejecting the claims on appeal:

Goldstein	5,410,326	Apr. 25, 1995
McNair et al. ("McNair")	5,595,342	Jan. 21, 1997
August et al. ("August")	5,671,267	Sep. 23, 1997
Pope	5,963,624	Oct. 5, 1999
Teskey	6,747,568	Jun. 8, 2004
Wouters et al. ("Wouters")	6,915,109	Jul. 5, 2005

The Examiner rejected claims 13-16, 19, 22 and 24-26 under 35 U.S.C. § 102(e) as anticipated by Wouters.

The Examiner rejected claims 1-10, 18, 20-21 and 23 under 35 U.S.C. § 103(a) as follows:

1. Claim 18 as unpatentable over Wouters and Teskey;
2. Claims 20 and 21 as unpatentable over Wouters and August;
3. Claim 23 as unpatentable over Wouters and Pope;
4. Claims 1, 3-4 and 9 as unpatentable over Pope and McNair;
5. Claim 2 as unpatentable over Pope, McNair and Goldstein;
6. Claims 5 and 10 as unpatentable over Pope, McNair and Teskey;

7. Claim 6 as unpatentable over Pope, McNair and August;
8. Claim 7 as unpatentable over Pope, McNair and Wouters;
9. Claim 8 as unpatentable over Pope, McNair, Wouters and August.

B. Findings of Fact ("FF")

Zilog's Specification

1. Zilog's specification describes "[i]n one embodiment, the indication of a pressed key is a keycode . . .". Spec. 7.

Wouters

2. Wouters depicts a remote control unit 3 including an infrared (IR) transmitter 4; and a radio frequency (RF) transmission system 6 including an IR receiver 7 and a radio transmitter 8 in a first room 1. Fig. 1; col. 3, ll. 23-30.
3. In a second room 2, there is a RF receiving system 12 which includes radio receiver 13 and IR transmitter 14; and an IR receiver 16 coupled to a device such as a VCR in room 2. Fig. 1; col. 3, ll. 31-36; claim 1.
4. A radio signal 10 is received via antenna 11 by radio receiver 13, which is coupled to IR transmitter 14 for generating IR signal 15. Fig. 1, col. 3, ll. 31-32.
5. When a user taps a key on the remote control device 3, the central processing unit (CPU) inside the remote control device determines which code needs transmitting and fetches the required data from its memory that comprises a database. Col. 4, ll. 53-58.
6. The invention may be used in a variety of systems and devices such as systems comprising or using remote control, VCR, TV, Internet-enabled TV, Set-top boxes, PC-TV, PC and home control. Col. 1, ll. 23-26.

Pope

7. Pope describes transmitting appliance control codes from a cordless digital telephone handset 10, 50 to base unit 12 in response to selection of the appliance control via the handset keypad 30. Figs. 1, 2; col. 2, ll. 48-col. 3, ll. 19.
8. The base unit processor 84 gets an infrared control code from memory 86 based on a received appliance control code. Fig. 3, col. 4, l. 62-col. 5, l. 11.
9. Base unit 12 transmits infrared control code through outer window 36 to electrical appliances 14-22. Fig. 1, col. 3, ll. 35-41.

McNair

10. McNair describes that wireless transmission between a room temperature sensor and a receiver can be around 173 MHz using frequency modulation techniques including frequency shift keying. Col. 2, ll. 9-18, 61-65.

Graham[1]

11. Graham describes modulating a digital code or binary code onto a carrier signal. Abs., Col. 2, ll. 11-16.
12. Modulating a digital code onto a carrier signal precludes unauthorized or accidental activation of a control of the receiving means. Spec. Abs.
13. Modulating a digital code or a binary code onto a carrier signal provides an exceptional degree of security and privacy. Col. 2, ll. 7-11.

C. Principles of Law

"It would be inconsistent with the role assigned to the PTO in issuing a patent to require it to interpret claims in the same manner as judges who,

[1] Graham, U.S. Patent No. 4,005,428 (issued Jan. 25, 1977).

post-issuance, operate under the assumption the patent is valid." *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). "[A]s an initial matter, the PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *Id.*

A claim undergoing examination is given its broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969). But, "limitations are not to be read into the claims from the specification." *In re Van Geuns,* 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citation omitted).

"[A]n indefinite article 'a' or 'an' in patent parlance carries the meaning of 'one or more' in open-ended claims containing the transitional phrase 'comprising.'" *KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1356 (Fed. Cir. 2000) (citations omitted).

"Anticipation under 35 U.S.C. § 102(e) requires that 'each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.'" *In re Robertson*, 169 F.3d. 743, 745 (Fed. Cir. 1999) (quoting *Verdegaal Bros., Inc. v. Union Oil Co.,* 814 F.2d 628, 631 (Fed. Cir. 1987)).

D. Analysis

Rejection of claims 13-16, 19, 22 and 24-26 as anticipated by Wouters

Claims 13 and 22

Independent claims 13 and 22 stand or fall together. App. Br. 11. Representative claim 13 recites "A remote control device comprising: a receiver . . . a transmitter . . .". App. Br. 34.

The Examiner finds that Wouters' system of devices depicted in room 1 and room 2 comprising an RF receiver, and an IR transmitter meets the claim limitations. Final Rejection 4, Ans. 3-4; citing Wouters col. 4, ll. 25-33, 48-57; fig. 1; FF[2]s 2-3.

Zilog argues that Wouters' system of devices depicted in room 1 and room 2 is not a single device. App. Br. 11-12; Reply Br. 7-8. Zilog argues that the Examiner's interpretation is improper and is contrary to how the term is used in the claims and specification. App. Br. 12; Reply Br. 7-8. Zilog asserts that it disavows the claim scope of a remote control so as to exclude a system and cites case law in support of its position. App. Br. 12

We are unpersuaded by Zilog's arguments. As made clear in *Morris,* the PTO does not interpret claims in the same manner as judges who operate under the assumption that the patent is valid. Instead, during patent prosecution before the PTO, the broadest reasonable interpretation applies. We broadly interpret "[a] remote control device" as an apparatus that includes one or more components. The claim does not require the components to be contained or housed within a single structure. Therefore, the Examiner's finding that Wouters' system of devices meets Zilog's "[a]

[2] FF denotes Finding of Fact.

remote control device" is consistent with the broadest reasonable interpretation of a remote control device.

For all these reasons we find that Zilog has not sustained its burden of showing that the Examiner erred in rejecting claims 13 and 22 as anticipated by Wouters.

Claims 14-16

Claim 14 is dependent on claim 13 and recites "said keycode corresponds to a second function of a second electronic consumer device, as well as to said function of said electronic consumer device." App. Br. 34.

The Examiner finds that when a remote control is used to activate two devices of the same kind (e.g., VCRs of the same brand name) the same key code is used for separate functions of turning on different electronic consumer devices. Ans. 12-13.

Zilog argues that Wouters does not describe one key code that corresponds to two separate functions of two different electronic consumer devices. App. Br. 13. Zilog further argues that the Examiner's interpretation is inconsistent with the tenets of claim interpretation and the use of the term "second function" in the claims and specification. Reply Br. 8. Zilog argues that under the tenets of claim interpretation "said function" and "a second function" used in the same claim cannot be interpreted to be the same function.

We agree with Zilog. Within the same claim, the Examiner interprets "said function" and "a second function" as the same function, yet interprets "said electronic consumer device" and "a second electronic consumer device" as different devices. The Examiner's interpretation of the claim terms within a single claim is inconsistent. To be consistent, both "a second

function" and "a second electronic consumer device" must either be the same as or different from both "said function" and "said electronic consumer device". Moreover, it would be counterintuitive for a claim drafter to use the term "a second function" if the intent was for it to be interpreted the same as "said function". For these reasons, we find that the Examiner's interpretation of "said function" and "a second function" as the same function to be unreasonable. We therefore find that the Examiner erred in finding claim 14 anticipated by Wouters.

Claims 15 and 16 are dependent on claim 14. App. Br. 34-35. For the same reasons explained above regarding claim 14, we find that the Examiner erred in rejecting claims 15 and 16 as anticipated by Wouters.

Claim 24

Claim 24 is dependent on claim 22 which recites "means for receiving a key code from said RF receiver and for sending said keycode to said IR transmitter. . .". App. Br. 14, 37. Claim 24 further recites "said means in a microcontroller." Both Zilog and the Examiner interpret a microcontroller as a processor. Reply Br. 9, Final Rejection 5.

Zilog argues that Wouters does not disclose that radio receiver 13 is a microcontroller and does not mention a microcontroller, microprocessor or processor of any kind. Reply Br. 9.

We agree with Zilog's arguments. The Examiner has not directed us to, and we can not find, where Wouters explicitly or inherently discloses that radio receiver 13 is a microcontroller or a processor. Instead, the Examiner relies on a citation to Wouters which describes that radio receiver 13 receives a radio signal via antenna 11. Ans. 4, 13; citing Wouters col. 3, ll. 31-32; FF 4.

For this reason, we find that the Examiner erred in rejecting claim 24 as anticipated over Wouters.

Claim 19

Independent claim 19 recites "a codeset is stored on said key code generator device, said codeset including said first key code and said second key code, wherein said first key code corresponds to a selected function of a first electronic consumer device, and wherein said second key code corresponds to said selected function of a second electronic consumer device . . .". App. Br. 35-36.

Zilog argues that Wouters does not describe two key codes included in a codeset stored on a key code generator (i.e., remote control unit 3). App. Br. 15-16; Reply Br. 10.

While Wouters describes that a set of codes are stored in the memory of the remote control device 3 (FF 5), the Examiner has not sufficiently explained how Wouters' stored codeset includes a first key code corresponding to a selected function of a first electronic consumer device and a second key code corresponding to said selected function of a second consumer device. The Examiner also has not sufficiently explained how Wouters explicitly or inherently describes the disputed claim limitations. Instead, the Examiner relies on Wouters description that IR receiver 16 is coupled to a VCR and the general statement that the invention can be used with a variety of systems and devices comprising or using a remote control, VCR, TV, etc. Final Rejection 4; Ans. 4, 13; citing Wouters col. 1, ll. 24-26; col. 3, ll. 21-35; FFs 3, 6. This is insufficient to establish a prima facie case of anticipation.

For these reasons we find that the Examiner erred in erred in rejecting claim 19 as anticipated over Wouters.

Claims 25 and 26

Independent claim 25 recites "receiving a keystroke indicator from a remote control device . . . transmitting said key code signal from said key code generator device to said remote control device . . .". App. Br. 16, 37. We interpret "said remote control device" to refer to, and be the same as, the aforesaid "a remote control device".

Zilog argues that Wouters does not describe (1) receiving a signal from a remote control device and (2) transmitting a second signal to the remote control device. App. Br. 16. Zilog argues that it is improper to ignore the structure of the "remote control device" and find that the claimed "remote control device" is met by separate structures for separate limitations within a claim. Reply Br. 11.

Zilog's arguments are persuasive and consistent with our interpretation that "said remote control device" is the same as the aforesaid "a remote control device". The Examiner has not directed us to, and we can not find, where Wouters describes receiving a keystroke indicator from a remote control device and transmitting a keycode signal to the *same* remote control device. Instead, the Examiner has directed us to Wouters' description of sending a keystroke indicator signal from one device (i.e., remote control unit 3) and transmitting the keycode to a different device (i.e., RF receiving system 12). Final Rejection 5, Ans. 5; citing Wouters col. 3, ll. 21-34; col. 4, ll. 25-37; fig 1.

For these reasons, we find that the Examiner erred in rejecting claim 25 as anticipated over Wouters.

Our interpretation of claim 25 may appear to be inconsistent with our interpretation of claims 13 and 22 because with respect to claim 25 we interpret the remote control as a singular device. However, claim 25 is a method claim that requires receiving a keystroke indicator from the remote control and also sending a keycode to the *same* remote control. In contrast, claims 13 and 22 are apparatus claims that do not include any additional structural recitations that require the remote control to be a single device or require the components to be encased in a single housing.

Claim 26 is dependent on claim 25. App. Br. 37. For the same reason as explained above regarding claim 25, we find that the Examiner erred in rejecting claim 26 as anticipated over Wouters.

Rejection of claim 18 as unpatentable over Wouters and Teskey

Claim 18 is dependent on claim 13. App. Br. 34. Claim 18 stands or falls with claim 13 since Zilog did not argue the limitations of claim 18 separately. App. Br. 29. For the same reasons explained above with respect to claim 13, we find that Zilog has not sustained its burden of showing that the Examiner erred in rejecting claim 18 as unpatentable over Wouters and Teskey.

Rejection of claims 20 and 21 as unpatentable over Wouters and August

Claims 20 and 21 are dependent on claim 19. Zilog does not argue the specific limitations of claims 20 or 21, but instead argues the limitations of claim 19. App. Br. 29. As applied by the Examiner, August does not remedy the deficiencies of Wouters. For the same reasons as explained above with respect to claim 19, we find that the Examiner erred in rejecting claims 20 and 21 as unpatentable over Wouters and August.

Rejection of claim 23 as unpatentable over Wouters and Pope

Claim 23 is dependent on claim 22. App. Br. 36. Zilog does not argue the specific limitations of claim 23, but, instead, argues the limitations of claim 22.

Zilog argues that Wouters' RF receiver, IR transmitter and keypad are not on the same device. App. Br. 30. Zilog further argues that Wouters' remote control unit 3 does not include an RF receiver. App. Br. 30. Zilog also argues that Pope teaches against including an IR transmitter on the handset. App. Br. 30.

As explained above with respect to claims 13 and 22, the broadest reasonable interpretation of "[a] remote control device" is an apparatus that includes one or more components or devices. The Examiner's finding that Wouters' remote control device comprises a system of devices is consistent with the broadest reasonable interpretation of the claims. Since "[a] remote control device" can include more than one device, Zilog's arguments that Wouters' remote control unit 3 (i.e., single unit) does not include an RF receiver is not commensurate in scope with the limitations of claims 22 and 23. Pope's teaching against including an IR transmitter on a handset is irrelevant since the claim language does not require all the components to be included in a single remote control device.

For all these reasons, we find that Zilog has not sustained its burden of showing that the Examiner erred in rejecting claim 23 as unpatentable over Wouters and Pope.

Rejection of claims 1, 3-4 and 9 as unpatentable over Pope and McNair

Representative claim 1 is independent and recites "modulating said key code onto a carrier signal . . .". App. Br. 32.

Zilog argues that McNair does not teach modulating a key code onto a carrier signal. App. Br. 21.

The Examiner finds that Pope does not describe modulating a key code onto a carrier signal, but instead relies on McNair for describing modulation of a carrier signal. Final Rejection 6; Ans. 6, 15; citing McNair col. 2, ll. 61-65.

We agree that McNair does not describe modulating a key code, or any code, onto a carrier signal. McNair merely describes frequency modulation including frequency shift keying modulation. FF 10.

For this reason, we find that the Examiner erred in determining that claims 1, 3, 4 and 9 are unpatentable over Pope and McNair.

Rejection of claim 2 as unpatentable over Pope, McNair and Goldstein

Claim 2 is dependent on and includes all of the limitations of claim 1. App. Br. 32. As applied by the Examiner, Goldstein does not make up for the deficiencies of the Pope and McNair references. For the same reasons as explained with respect to claim 1, we find that the Examiner has erred in determining that claim 2 is unpatentable over Pope, McNair and Goldstein.

Rejection of claims 5 and 10 as unpatentable over Pope, McNair and Teskey

Claims 5 and 10 are directly or indirectly dependent on and include all of the limitations of claim 1. App. Br. 32-33. As applied by the Examiner, Teskey does not make up for the deficiencies of the Pope and McNair references. For the same reasons as explained with respect to claim 1, we find that the Examiner has erred in determining that claims 5 and 10 are unpatentable over Pope, McNair and Teskey.

Rejection of claim 6 as unpatentable over Pope, McNair and August

Claim 6 is dependent on and includes all of the limitations of claim 1. App. Br. 32. As applied by the Examiner, August does not make up for the deficiencies of the Pope and McNair references. For the same reasons as explained with respect to claim 1, we find that the Examiner has erred in determining that claim 6 is unpatentable over Pope, McNair and August.

Rejection of claim 7 as unpatentable over Pope, McNair and Wouters

Claim 7 is dependent on and includes all of the limitations of claim 1. App. Br. 32. As applied by the Examiner, Wouters does not make up for the deficiencies of the Pope and McNair references. For the same reasons as explained with respect to claim 1, we find that the Examiner has erred in determining that claim 7 is unpatentable over Pope, McNair and Wouters.

Rejection of claim 8 as unpatentable over Pope, McNair, Wouters and August

Claim 8 is dependent on and includes all of the limitations of claim 1. App. Br. 32. As applied by the Examiner, Wouters and August do not make up for the deficiencies of the Pope and McNair references. For the same reasons as explained with respect to claim 1, we find that the Examiner has erred in determining that claim 8 is unpatentable over Pope, McNair, Wouters and August.

New Ground of Rejection

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a

> person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Pope in view of Graham.

Pope's description of transmitting appliance control codes (i.e., keystroke indicator) from handset 10, 50 (i.e., remote control) to base unit 12 (i.e., key code generator) in response to selection of the appliance control via keypad 30 meets the limitation of "receiving a keystroke indicator signal from a remote control device. . . ". FF 7. Pope's description that base unit (i.e., key code generator) processor 84 gets an infrared control code (i.e., key code) from memory 86 based on a received appliance control code (key stroke indicator signal) meets the limitation of "generating a key code within a key code generator device . . .". FF 8. Pope's description of base unit 12 (i.e., key code generator) transmitting infrared control code (i.e., key code) through outer window 36 to electrical appliances 14-22 meets the limitation of "transmitting said key code signal from said key code generator device". FF 9.

Although Pope does not describe modulating the keycode onto a carrier signal, attention is directed to Graham which describes modulating a digital code or binary code onto a carrier signal. FF 11. Graham describes that doing so offers the advantages of precluding unauthorized or accidental activation of a control associated with the receiving means and provides an exceptional degree of security and privacy. FFs 12-13. It would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the method of Pope to include modulating the key code onto a carrier signal since doing so offers the advantages of precluding

unauthorized or accidental activation and provides an exceptional degree of security and privacy.

Zilog argues that Pope's appliance control codes transmitted by handset 10, 50 are not a keystroke indicator signal. App. Br. 20-21, Reply Br. 11-12. Zilog urges a narrow interpretation of the term "keystroke indicator signal" to mean an indication of a selected key while precluding a control code. App. Br. 20-21, Reply Br. 11-12. During prosecution, claims are subject to the broadest reasonable interpretation consistent with the specification. Zilog's narrow interpretation is inconsistent with its specification. Zilog's specification describes "[i]n one embodiment, the indication of a pressed key is a keycode . . .". FF 1. Since Zilog's own specification indicates that the keystroke indicator can be a code (i.e. a key code), the finding that Pope's appliance control codes meet the limitation of a keystroke indicator signal is consistent with the broadest reasonable interpretation.

E. Decision

Upon consideration of the appeal, and for the reasons given herein, it is

ORDERED that the decision of the Examiner rejecting claims 13 and 22 under 35 U.S.C. § 102(e) as anticipated by Wouters is affirmed.

ORDERED that the decision of the Examiner rejecting claims 14-16, 19 and 24-26 under 35 U.S.C. § 102(e) as anticipated by Wouters is reversed.

ORDERED that the decision of the Examiner rejecting claim 18 under 35 U.S.C. § 103(a) as unpatentable over Wouters and Teskey is affirmed.

ORDERED that the decision of the Examiner rejecting claims 20-21 under 35 U.S.C. § 103(a) as unpatentable over Wouters and August reversed.

ORDERED that the decision of the Examiner rejecting claim 23 under 35 U.S.C. § 103(a) as unpatentable over Wouters and Pope is affirmed.

ORDERED that the decision of the Examiner rejecting claims 1, 3, 4 and 9 under 35 U.S.C. § 103(a) as unpatentable over Pope and McNair is reversed.

ORDERED that the decision of the Examiner rejecting claim 2 under 35 U.S.C. § 103(a) as unpatentable over Pope, McNair and Goldstein is reversed.

ORDERED that the decision of the Examiner rejecting claims 5 and 10 under 35 U.S.C. § 103(a) as unpatentable over Pope, McNair and Teskey is reversed.

ORDERED that the decision of the Examiner rejecting claim 6 under 35 U.S.C. § 103(a) as unpatentable over Pope, McNair and August is reversed.

ORDERED that the decision of the Examiner rejecting claim 7 under 35 U.S.C. § 103(a) as unpatentable over Pope, McNair and Wouters is reversed.

ORDERED that the decision of the Examiner rejecting claim 8 under 35 U.S.C. § 103(a) as unpatentable over Pope, McNair, Wouters and August is reversed.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 CFR § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

> (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .
>
> (2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

AFFIRMED IN-PART
New Ground of Rejection - 37 C.F.R. § 41.50(b)

ack

cc:

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